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RHB BANK BHD v. RICHLAND LEISURE GROUP SDN BHD; NG SEANG HENG (THIRD PARTY)

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[SUIT NO: WA-22NCC-607-12-2020]
19 DECEMBER 2023

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Abstract – *The legal framework governing the recovery of payments made by mistake, while is well-established, ought to still be examined by the court. The court should weigh whether the circumstances necessitate a refund based on natural justice and equity. Recovery of money is allowed where it is inequitable for the recipient to retain it, thus ensuring that justice and fairness prevails in transactions where one party inadvertently benefits at the expense of another.*

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BANKING: *Banker and customer – Forgery – Individual gambled using money from innocent company's bank account using forged payment instructions – Payment remittance made to junket operator – Junket operator allocated non-negotiable gaming chips to individual equivalent to remitted sums – Money subsequently transferred to account of casino – Whether 'highly unusual' for a company to use funds for individual to gamble – Whether transactions indicative of normal business transactions – Whether junket operator unjustly enriched – Whether junket operator liable to repay funds received*

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Ng Seang Heng ('Ng') went on a million ringgit gambling spree with money from an innocent company's bank account, Fujikura (Malaysia) Sdn Bhd ('Fujikura'), using forged payment instructions. Three outward telegraphic transfer transactions executed by the plaintiff, RHB Bank Bhd ('RHB'), to remit sums totalling RM1,031,000 from its customer, Fujikura's bank account, to Richland Leisure Group Sdn Bhd ('Richland') bank account with Malayan Banking Berhad over the period of 11 September 2020 to 18 September 2020. Richland was a junket operator that had been authorised by Genting Malaysia Bhd ('Genting') to operate a local group casino rebate programme ('casino rebate programme') at Genting's casino. RHB processed the forms as they bore the signatures and stamps that matched its records for Fujikura at that time. RHB would also call Fujikura's authorised personnel, per RHB's standard procedures, to confirm each transaction before remitting the moneys. RHB did accordingly receive confirmation from Fujikura's authorised representatives before making each of the three payments. However, sometime after 18 September 2020, Fujikura filed a complaint with RHB alleging that it did not authorise or sign the three remittance application forms. After investigating, RHB discovered that the signatures, stamp and authorised personnel details reflected in the three forms did not match or correspond with Fujikura's actual authorised signatories, stamp and contacts in RHB's records. RHB thus concluded that the three forms, which

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induced it to remit RM1,031,000 to Richland, were forged documents that were not genuinely issued or authorised by Fujikura. RHB's attempt to recall the RM1,031,000 paid into Richland's account was largely unsuccessful. This led to the filing of this action by RHB against Richland to recover the sum mistakenly remitted to Richland.

Held (dismissing RHB's claim):

(1) Since January 2010, Richland had been engaged in handling funds from diverse sources, as an authorised operator of the casino rebate programme, as substantiated by Richland's Maybank statements. RHB did not lead any evidence to challenge the common business practice of Richland to show that it was 'highly unusual' for a company to use its funds for an individual to gamble. RHB also did not lead any evidence to show that the total sum remitted by Fujikura to Richland for the sum of RM1,031,000 was extremely exceptional in the gambling industry. Also, there was no evidence led by RHB to suggest that the risk of fraud was high by the nature of the gambling industry. RHB's allegations were based on speculation and unsupported by evidence and hence, the transaction between Richland and Ng were carried out in the ordinary course of Richland's business. (paras 45, 47 & 49)

(2) The absence of a prior relationship between Richland and Fujikura did not, by itself, indicate any irregularity, especially given the nature of Richland's business and the wide range of its financial dealings. In fact, Richland did not deny receiving the funds from Fujikura. Companies, in their own capacity, could not gamble in Genting's casino. The funds received by Richland from third party companies was for the purpose of individual players to gamble in Genting's casino. Richland's bank statements for year 2020 sufficiently proved Richland's common business practice. There was no compelling reason for Richland to be put on inquiry before proceeding with the transactions for Ng. RHB's contentions, while not without merit in a different context, did not adequately challenge the established and routine nature of Richland's business practices. (paras 50-53)

(3) Richland did not ignore the discrepancies of the first remittance application form. The discrepancies were brought to the attention of Ng which was subsequently rectified in the second and third remittance application forms. At the point of opening Ng's casino rebate programme account, it was reasonable for Richland to accept that everything was in order as the remittance would have only occurred after RHB had approved the transaction upon receiving the required approvals from Fujikura. A bank such as RHB would have even more stringent approval procedures and it was reasonable for Richland to expect that such a large transaction would have required approval from the remitter. (paras 58 & 59)

(4) Richland's payments to Genting on 15 September 2020 and 23 September 2020 were indicative of normal business transactions and did not in themselves imply any act of bad faith or an attempt to evade the consequences of the alleged fraud. Nothing was ascribed to the recall being unsuccessful due to insufficient funds. No particulars were also given as to how the 'attempt to recall' were made. Therefore, RHB's contention that Richland dissipated funds from its account to put the moneys it received from RHB out of reach after becoming aware of the fraud and after RHB's attempt to recall the moneys from Richland's account, failed. (paras 64, 66 & 69)

(5) Ng was engaged in gambling activities facilitated by Richland, consistent with Richland's role as an operator of the casino rebate programme. Richland's actions following the receipt of funds from Fujikura indicate compliance with standard business practices rather than unjust enrichment. Richland allocated non-negotiable gaming chips to Ng equivalent to the remitted sums and subsequently transferred the equivalent sums to Genting to account for these chips. Richland's commission from these transactions amounted to only 0.1%, underscoring the absence of any significant financial gain that could be construed as unjust enrichment. Moreover, Richland's swift response to the notification of fraud by RHB, as evidenced by the police report, demonstrated its good faith and lack of involvement in any fraudulent activity. In this light, Richland did not receive RHB's money under circumstances that would necessitate a refund. Richland's actions were within the scope of its legitimate business operations, and no grounds existed for RHB to recover the said sum on the basis of money had and received. (paras 73-77)

Case(s) referred to:

Affin Bank Bhd v. MMJ Exchange Sdn Bhd & Anor [2011] 9 CLJ 721 HC ***(refd)***

Ambank (M) Bhd v. KB Leisure (M) Sdn Bhd [2011] 7 CLJU 764; [2011] 1 LNS 764 HC ***(refd)***

Bank Bumiputra Malaysia Bhd v. Hashbudin Hashim [1998] 2 CLJ Supp 332 HC ***(refd)***

Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd [1942] 2 All ER 122 ***(refd)***

Moses v. Macferlan (1760) 2 Burr 1005 ***(refd)***

Pos Logistics Bhd v. Kumpulan Perubatan Smarthealth Sdn Bhd [2020] 4 CLJ 670 HC ***(refd)***

The Royal Bank Of Scotland Bhd v. Seng Huah Hua & Ors [2013] CLJU 96; [2013] 1 LNS 96 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 73

For the plaintiff - Sean Yeow, Andrea Chew & Juliana Lee; M/s Lee Hishamuddin Allen & Gledhill

For the defendant - Daryl Kong; M/s Edwin Lim & Suren

Reported by S Barathi

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

[1] Ng Seang Heng went on a million ringgit gambling spree, not with his own, but someone else's money. Specifically, money from an innocent company's bank account using forged payment instructions. By the time the bank discovered the forged forms based on which it remitted monies to the gambler *via* a junket operator's account, funds were gone. The junket operator claims it dealt *bona fide* – immediately putting incoming monies into more casino chips given to Ng. Hence, the bank's hopes of recovery hit a blank wall. Now the bank wants the money repaid – but the junket operator says it cannot pay back what it no longer has. The dispute turns on whether the junket operator can be held liable to repay the funds it received due to the bank's mistake. The court will have to determine who will bear the cost of Ng's lavish spending escapade: the bank or the junket operator?

Background Facts

[2] The plaintiff, RHB Bank Berhad ("RHB"), is a licensed bank in Malaysia. The defendant, Richland Leisure Group Sdn Bhd ("Richland"), is a junket operator that has been authorised by Genting Malaysia Berhad ("Genting") since January 2010 to operate a Local Group Casino Rebate Programme ("Casino Rebate Programme") at Genting's casino. Under this programme, individuals are enrolled by agents like Richland to participate in the rebate programme when they gamble at Genting's casino. Richland earns a commission from Genting based on the rebate structure for every player it brings in.

[3] The dispute arose from three outward telegraphic transfer transactions executed by RHB to remit sums totalling RM1,031,000 from its customer Fujikura (Malaysia) Sdn Bhd's ("Fujikura") bank account ("Fujikura's account") to Richland's bank account with Malayan Banking Berhad (Maybank) ("Richland's account") over the period of 11 September 2020 to 18 September 2020.

[4] The first transaction occurred on 11 September 2020 when RHB remitted RM286,000 to Richland's account based on a remittance application form dated 11 September 2020 submitted to RHB. This form on its face reflected Fujikura as the applicant and authorised the remittance to Richland. It bore a company stamp purporting to be Fujikura's stamp as well as an authorised signatory's signature.

[5] The second transaction occurred on 14 September 2020, three days later. On this occasion, RM357,000 was remitted following a remittance application form dated 14 September 2020 submitted to RHB, again showing Fujikura as the applicant authorising remittance to Richland, with a similar company stamp and authorised signature.

[6] The third transaction occurred on 18 September 2020, four days after the second transaction. This time RM388,000 was remitted based on a remittance form dated 18 September 2020 reflecting the same application details as the previous two forms.

[7] Altogether, RHB remitted RM1,031,000 over these three transactions to Richland's account based on Fujikura's apparent authorisation per the remittance forms submitted. RHB processed the forms as they bore signatures and stamps that matched its records for Fujikura at that time. RHB would also call Fujikura's authorised personnel, per RHB's standard procedures, to confirm each transaction before remitting the moneys. RHB did accordingly receive confirmation from Fujikura's authorised representatives before making each of the three payments.

[8] However, sometime after 18 September 2020, Fujikura filed a complaint with RHB alleging that it did not authorise or sign those three remittance application forms. After investigating, RHB discovered that the signatures, stamp and authorised personnel details reflected in the three forms did not in fact match or correspond with Fujikura's actual authorised signatories, stamp and contacts in RHB's records. RHB thus concluded that the three forms, which induced it to remit RM1,031,000 to Richland, were forged documents that were not genuinely issued or authorised by Fujikura.

[9] Premised on this, on 23 September 2020, RHB contacted Richland's bankers Maybank to request the recall of the RM1,031,000 paid into Richland's account. However, by the time RHB notified Maybank, there was only RM2,806.32 remaining in Richland's account, the rest having being paid out. Hence the recall attempt was largely unsuccessful.

[10] Consequently, RHB filed this action against Richland to recover the RM1,031,000 that was remitted to Richland.

RHB's Claim

[11] In this action, RHB is claiming against Richland:

(i) the sum of RM1,031,000, being money paid by mistake when RHB remitted this sum from Fujikura's account to Richland's account, based on purported payment instructions and authorisations that were subsequently discovered to be forgeries not genuinely made by Fujikura;

(ii) interest at 5% per annum on the sum of RM1,031,000 from the date of demand on 2 November 2020 until full payment;

(iii) costs of the legal action; and

(iv) any other relief deemed proper and fit by the court.

[12] In summary, RHB paid a total RM1,031,000 by mistake to Richland and is now claiming this amount from Richland on grounds of mistake, money had and received and unjust enrichment.

Summary Of RHB's Case

[13] RHB's case is summarised as follows:

(i) Fujikura is a customer of RHB holding a current account number 21403500059784 with RHB previously defined as "Fujikura's account";

(ii) on 11 September 2020, 14 September 2020 and 18 September 2020 RHB, as a result of a mistake by its employees, remitted a sum of RM286,000, RM357,000 and RM388,000 respectively from Fujikura's account to Richland's account held with Malayan Banking Berhad bearing account number 50606150 0658;

(iii) Fujikura did not instruct nor authorise RHB to make the said remittances amounting to RM1,031,000 in total to Richland's account. The purported instructions or authorisations of Fujikura for the said remittances were forgeries;

(iv) RHB has paid Fujikura the sum of RM1,031,000 that was mistakenly remitted from Fujikura's account to Richland's account without Fujikura's instructions or authority;

(v) Richland is liable to return the sum of RM1,031,000 that was mistakenly transferred to Richland's account or alternatively as money had and received; and

(vi) Richland did not change its position in good faith after receipt of the RM1,031,000 and natural justice and equity requires that Richland return the sum of RM1,031,000 to RHB.

Summary Of Richland's Case

[14] Richland's case is summarised as follows:

(i) Richland is authorised by Genting to operate its Casino Rebate Programme and earns commission for players enrolled;

(ii) RM1,031,000 was remitted from Fujikura's account to Richland's account in three transactions on 11 September 2020, 14 September 2020 and 18 September 2020 based on remittance forms;

(iii) these sums were received on behalf of Ng for his enrolment into Genting's Casino Rebate Programme;

(iv) upon receiving the sums, Richland provided equivalent gaming chips to Ng for use in Genting's casino;

(v) by end September 2020, Richland had fully paid Genting RM1,031,000 to account for the chips given to Ng; and

(vi) hence, Richland did not retain or benefit from the sums received save for minimal commission.

(vii) Richland denies liability to to RHB's claim for the sum of RM1,031,000 mainly for the following reasons:

(a) the sum of RM1,031,000 remitted from Fujikura's account to Richland's account has already been paid to Genting *via* two separate transactions on 15 September 2020 and 23 September 2020, to Genting to account for the value of the non-negotiable gaming chips paid to Ng. Therefore, Richland has not been unjustly enriched through or benefited from the remitted sums;

(b) Richland relied on and acted according to the remittance application forms duly executed by Fujikura together with the confirmation from RHB which approved Fujikura's remittance application forms and remitted the moneys to Richland's account before paying out the non-negotiable gaming chips to Ng; and

(c) Richland has in good faith materially changed its position by acquiring for value and paying out the non-negotiable gaming chips to Ng in exchange for the sums remitted from Fujikura's account to Richland's account.

Witnesses

[15] RHB called two witnesses whose witness statements are marked "WSPW1" and "WSPW2" as follows:

(i) PW1 is Mingu Lee, Director of Fujikura (Malaysia) Sdn Bhd. His evidence was on whether Fujikura authorised the remittance transactions to Richland. His witness statement is marked as "WSPW1"; and

(ii) PW2 is Nor Aida binti Mohd Azelan, the Branch Manager of RHB's Bandar Mahkota Cheras branch. Her evidence was on the remittance transactions from Fujikura's account to Richland's account. Her witness statement is marked as "WSPW2."

[16] Richland called one witness, Tan Mun Ting (DW1). She is a director of the defendant, Richland Leisure Group Sdn Bhd. Her evidence is on the remittance transactions between Fujikura's account and Richland's account. Her witness statement is marked as "WSDW2."

The Law

[17] The legal framework governing the recovery of payments made by mistake is well-established and grounded in both common law and statutory provisions. At the core of this legal area is the principle that a person who mistakenly makes a payment to another is *prima facie* entitled to recover it. This was clearly articulated in the seminal case of *Barclays Bank Ltd v. W J Simms Son & Cooke (Southern) Ltd* [1979]. In this case, the issue was whether

a bank that overlooks a customer's instructions to stop payment on a cheque and pays out the cheque amount by mistake can recover the money from the cheque payee. Barclays Bank had paid out a cheque for £24,000 to the defendant after overlooking its customer's (the cheque drawer) instructions to stop payment on that cheque. Upon discovery of the mistake, Barclays sought to recover the £24,000 from the cheque payee. The court had to determine if Barclays was entitled in law to recover the mistaken payment based on principles governing recovery of monies paid by mistake. The key questions examined were the nature of mistake required, defences available to defeat such claims, and the impact of the cheque being paid without mandate from the customer. The key principles were stated by Goff J:

> From this formidable line of authority certain simple principles can, in my judgment, be deduced.
>
> 1. *If a person pays money to another under a mistake of fact which causes him to make the payment, he is prima facie entitled to recover it as money paid under a mistake of fact.*
>
> 2. *His claim may however fail if:*
>
> the payer intends that the payee shall have the money at all events, whether the fact be true or false, or is deemed in law so to intend;
>
> (b) the payment is made for good consideration, in particular if the money is paid to discharge, and does discharge, a debt owed to the payee (or a principal on whose behalf he is authorised to receive the payment) by the payer or by a third party by whom he is authorised to discharge the debt;
>
> (c) *the payee has changed his position in good faith,* or is deemed in law to have done so. (emphasis added)

[18] Further reinforcing these principles, s. 73 of the Contracts Act 1950 provides a statutory basis for the recovery of money or items delivered by mistake (or under coercion), s. 73 expressly states that money paid under a mistake must be refunded by the recipient. It reads:

> 73 Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.
>
> **A person to whom money has been paid,** or anything delivered, **by mistake** or under coercion, **must repay or return it.** (emphasis added)

[19] The principles in *Barclays Bank* and s. 73 have been endorsed and applied in local cases such as *Bank Bumiputra Malaysia Bhd v. Hashbudin Hashim* [1998] 2 CLJ Supp 332; [1998] 3 MLJ 262, *Affin Bank Bhd v. MMJ Exchange Sdn Bhd & Anor* [2011] 9 CLJ 721 and *The Royal Bank Of Scotland Bhd v. Seng Huah Hua & Ors* [2013] CLJU 96; [2013] 1 LNS 96; [2013] 9 MLJ 681.

[20] Hence, under settled law, *prima facie* a payor is entitled to recover from the payee money that was paid by mistake subject to limited exceptions including change of position by recipient in good faith.

[21] As for recovery of money had and received, this is fundamentally rooted in the principles of equity and natural justice. This doctrine is illustrated in the High Court case of *Bank Bumiputra Malaysia Sdn Bhd v. Hasbudin Hashim* (*supra*), which references the historic case of *Moses v. Macferlan* (1760) 2 Burr 1005 and the House of Lords decision in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd* [1942] 2 All ER 122.

[22] In *Moses v. Macferlan*, Lord Mansfield established the rationale for an action for money had and received, emphasising its equitable nature. This action is aimed at recovering money which, in fairness and justice, should not be retained by the defendant. It is predicated on the idea that the defendant, under the given circumstances, is bound by the principles of natural justice and equity to refund the money. This action is not applicable for money paid by the plaintiff which is deemed payable in terms of honour and honesty. Instead, it focuses on situations where retaining the money would be against the principles of justice and fairness.

[23] Lord Wright, in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd*, further elaborated on this principle, stating that it is against conscience for a person to retain money derived from another under circumstances that are unjust.

[24] Building upon these principles, the case of *Bank Bumiputra Malaysia Sdn Bhd v. Hasbudin Hashim* (*supra*), further reinforced the concept. Similarly, in *Ambank (M) Bhd v. KB Leisure (M) Sdn Bhd* [2011] CLJU 764; [2011] 1 LNS 764; [2012] 7 MLJ 364, the court considered these principles and concluded that the fundamental question to determine in such cases is whether the defendant has received the plaintiff's money under circumstances that would necessitate a refund based on natural justice and equity. This cause of action essentially revolves around the concept of unjust enrichment at the expense of the plaintiff.

[25] In essence, the doctrine of recovery of money had and received is an equitable remedy aimed at preventing unjust enrichment. It allows for the recovery of money where it is inequitable for the recipient to retain it, thus ensuring that justice and fairness prevail in transactions where one party inadvertently benefits at the expense of another.

Issues

[26] After considering the facts of the case and the defences relied on by Richland, the court frames the following issues for deliberation which this court considers pivotal to the resolution of this case:

(i) whether RHB can recover the funds mistakenly remitted to Richland based on forged documents, considering RHB's adherence to standard procedures and Richland's defence of change of position in good faith;

(ii) whether Richland defence of a change in position, having disbursed the funds to Ng which Richland claims to be in good faith for non-negotiable gaming chips, is valid in the context of RHB's claim for repayment of monies mistakenly remitted;

(iii) whether Richland should have been put on inquiry regarding the origin of funds used by Ng for gambling activities, given the unusual circumstance of receiving money from a third-party company, Fujikura, with which it had no prior dealings;

(iv) whether Richland in the context of its defence of change of position, can be considered to have acted in good faith given RHB's allegation that Richland ignored clear discrepancies in the initial remittance form marked as 'goods payment' with a non-existent invoice, and whether Richland's subsequent advice to Ng regarding remittance references constituted due diligence or deliberate oversight;

(v) whether Richland acted in bad faith by swiftly transferring RM1.6 million from its account after being notified of a potential fraud and RHB's attempt to recall the remittances, thereby allegedly dissipating funds to prevent their recovery by RHB; and

(vi) whether Richland is liable to refund RM1,031,000 to RHB under the claim of money had and received on the basis that it constitutes unjust enrichment of Richland necessitating a refund.

[27] In the ensuing part of this judgment, this court will structure its deliberations around the issues above.

Analysis And Findings Of The Court

Mistake

[28] RHB submits that the mistake in this case stemmed from acting on forged documents. PW1, a director of Fujikura, testified that Fujikura did not issue or sign the remittance application forms, had no dealings with Richland, and did not authorise the transactions in question. RHB's branch manager confirmed that after an investigation prompted by Fujikura's complaint, it was found that the signatures and company stamp on the remittance application forms did not match RHB's records, thus indicating forgery. Drawing parallels to similar legal cases, such as *The Royal Bank of Scotland Bhd v. Seng Huah Hua* (*supra*) and *Affin Bank Bhd v. MMJ Exchange Sdn Bhd* (*supra*), it is argued that payments made under the mistaken belief of genuine authorisations, as in this case, are recoverable by the bank. Therefore, RHB contends that since the payments to Richland were made under a mistaken belief based on forged documents, unless Richland proves its defence of change of position in good faith, it is liable to repay the mistakenly paid funds.

[29] Richland submits that there was no mistake in the three remittance transactions totalling RM1,031,000 made by Fujikura to Richland. It argues this based on RHB's adherence to standard operating procedures during the transactions, which involved verifying signatures, checking account balances, and confirming transactions with Fujikura's authorised personnel. Richland points out that all three remittance application forms contained accurate particulars of Fujikura and Richland, including Fujikura's company stamp and director's signature, which were processed as per direct instructions from Fujikura. Additionally, Richland highlights that each transaction was approved only after these procedures were fully complied with, involving multiple officers from RHB's side. Consequently, Richland contends that RHB's claim of a mistake is unsustainable, especially given the lack of a contractual relationship between RHB and Richland.

[30] Having duly considered the submissions of both RHB and Richland, I will now proceed to state my findings on the matter at hand.

[31] It is conceded by RHB that there was negligence by RHB when it approved the three remittances, even following the standard operating procedures. RHB was indeed deceived by the forgeries of Ng.

[32] Even so, I find that there was a mistake by RHB making the remittances on 11 September 2020, 14 September 2020 and 18 September 2020 even if RHB followed its standard operating procedures. What is relevant is whether Fujikura intended to make the payments to Richland and there is no dispute that Fujikura did not intend to do so. The payments were not authorised by Fujikura and then mistakenly made by RHB to Richland's account.

[33] A bank's mistake occurring after conducting the necessary checks and in cases of payment under mistake, negligence on the part of the payer does not invalidate the right to recover.

[34] In the case of *Ambank (M) Bhd v. KB Leisure (M) Sdn Bhd* (*supra*), the plaintiff bank sought to recover RM1,074,710.50 from the defendant money changer firm, representing proceeds from three forged cheques drawn on the account of an innocent third party. The forged cheques were used to purchase cashier's orders made payable to the defendant. The defendant claimed to have no knowledge of any fraud and that it received the money as payment for foreign currency it sold to a company called Source Code Asia Sdn Bhd.

[35] The plaintiff bank claimed it acted under the mistaken belief that the cheques presented to purchase the cashier's orders were genuine based on the necessary checks conducted. But the cheques turned out to be forged, so the plaintiff issued the cashier's orders under a mistake. The plaintiff argued that even though its officers made the mistake after conducting checks a bank's negligence is irrelevant and does not prevent recovery of payments made under mistake. Nallini Pathmanathan J (as she then was) stated:

> The plaintiff led evidence to indicate that the plaintiff's officers had conducted the necessary checks before the COs were issued, and that more than one officer had checked the documents. Still, the mistake occurred. Nonetheless, it is not for the court to penalise the plaintiff or its officers over this, since it is clear law that **in cases of payment under mistake, negligence on the part of the payer does not invalidate the right to recover;** *Kelly v. Solari, Hashbudin Hashim*. (emphasis added)

[36] Nevertheless, the court held that the plaintiff failed to establish payment by mistake under s. 73 of the Contracts Act 1950 or a sustainable claim in money had and received. The defendant had not been unjustly enriched as it gave consideration in foreign currency in exchange for the payment.

[37] In the case of *Bank Bumiputra Malaysia Bhd v. Hashbudin Hashim* (*supra*), the appellant bank sought to recover RM25,000 that was paid by mistake on a cheque that had been countermanded by the bank's customer prior to payment. The Sessions Court dismissed the bank's claim, finding that the mistake was due to the bank teller's negligence rather than a mistake under the Contracts Act. On appeal, the High Court held that the countermand was valid and thus, the bank's payment was without mandate. As such, s. 73 of the Contracts Act allowing recovery of money paid by mistake applied. The court also found the bank had an alternative cause of action for money had and received under common law. Thus, the appeal was allowed. At pp. 340 to 341 (CLJ Supp); p. 270 (MLJ), Nik Hashim J (as he then was) stated:

> It is settled law that in an action for the recovery of money paid under mistake, the bank's negligence is irrelevant. The Australian case of *Commercial Bank of Australia Ltd v. Younis* [1979] 1 NSWLR 444 expressly held on the authority of *Kelly v. Solari* that the bank's negligence did not affect its right to recover money paid in mistake.

[38] At p. 340 (CLJ Supp); p. 271 (MLJ), His Lordship further stated:

> The provisions of s. 73 of the Act are very clear without any exception that the payee must repay the money which has been paid by mistake. It is settled law that in an action for the recovery of money paid under mistake, the bank's negligence is irrelevant.

[39] Negligence of RHB being irrelevant, the real issue for the court to consider is whether Richland can rely on its defence of change of position in good faith which is considered below.

Change Of Position

[40] RHB's submission is that Richland's defence of change in position cannot be accepted as Richland did not satisfy the "good faith" requirement. In gist, the contention of Richland is it had in good faith materially changed its position by acquiring for value and disbursing the non-negotiable gaming

chips to Ng in exchange for the sum remitted by Fujikura to Richland and it would be detrimental if it were now to be required to refund RHB the moneys remitted by Fujikura. On this, RHB submitted that:

(i) Richland did not attempt to make any due inquiry even though it knew the moneys were remitted from a third party company and not by Ng;

(ii) Richland turned a blind eye to the obvious discrepancies in the first remittance form stating "goods payment" and a non-existent invoice; and

(iii) Richland swiftly transferred RM1.6 million from its account after becoming aware of the fraud and attempt to recall the moneys from its account.

[41] These will be taken in turn below.

Put On Inquiry

[42] RHB submits that Richland was put on inquiry regarding the origin of funds used by Ng for gambling, as the money came from a third-party company, Fujikura, with which Richland had no prior dealings. This situation was confirmed by DW1 in cross-examination, acknowledging that this was the first instance of receiving funds from Fujikura. Despite the unusual and potentially illegal nature of using company funds for individual gambling, Richland failed to conduct any inquiries into the matter. DW1's testimony indicated a lack of concern about the source of the funds, focusing only on the receipt and tallying of the money with the bank slip. RHB argues that Richland's practice of accepting third-party funds without inquiry, and the unilateral redaction of bank statements without court permission, undermines its defence and may warrant adverse inferences against Richland.

[43] Richland submits that the nature of its business dealings with Ng, conducted in the Genting casino, is a common practice and was confirmed by its witness DW1. Richland acknowledges receiving funds from Fujikura but maintains this is consistent with its usual business of receiving third party payments, as evidenced by various company names appearing in its Maybank statements. Furthermore, Richland, operating as Genting's authorised operator for the Casino Rebate Programme since January 2010, asserts that its business practices involve introducing customers to gamble at casinos, thereby earning commissions. Richland contends that RHB's assumption that it is unusual for a company to use its funds for individual gambling is baseless and emphasises that there is no evidence challenging its common business practice.

[44] Upon careful deliberation on the issue of Richland being put on inquiry when receiving third-party funds for gambling activities, the court has evaluated the submissions presented by both RHB and Richland. Having

considered the entirety of the arguments and evidence related to this point, the court concludes that Richland's position is more compelling and substantiated. Therefore, on this particular point, the court finds in favour of Richland.

[45] Richland's business operations, as elucidated by DW1, involve transactions in the context of a casino, primarily Genting Casino. This is crucial to understanding the normative practices of Richland. Since January 2010, Richland has been engaged in handling funds from diverse sources, as an authorised operator of the Casino Rebate Programme. This point is substantiated by Richland's Maybank statements, which reflect transactions from various months in the year 2020. The bank statements produced were redacted to the extent, full names of the payor were not shown but some words were left to indicate sufficiently that the payments were made by companies. Richland's position is that these were payments or funds received from third-party companies on behalf of a player.

[46] Although the court may draw an adverse inference against Richland regarding the unilateral redaction (see: *Pos Logistics Bhd v. Kumpulan Perubatan Smarthealth Sdn Bhd* [2020] 4 CLJ 670; [2020] 9 MLJ 389), in this case, I will not do so. The nature of the redaction (done for reasons of confidentiality) was only to hide the actual names of the payors leaving enough words to indicate that companies or businesses made the payment. I cannot read anything else into the redacted information when it is quite clear to me that companies or businesses and not individuals made these payments. These statements consistently show entries from entities with designations such as "Enterprise", "Sdn Bhd", "Merchant", "Marketing", "Services", "Trading", "Karaoke Lounge", "Fashion", "Solution", "Resources", "Store", "Food House", "Tech", "Communication", "Construct", "Wholesale", "Computer", "Beauty", "Machine", "Mobile", "Stationary", "Telezone", and "Auto Trade". This variety of sources underscores the routine nature of dealing with corporate funds in Richland's business.

[47] RHB's argument rests on the premise that it is uncommon and suspicious for a company to use its funds for an individual's gambling activities. This assumption, while perhaps rational in a different business context, lacks concrete evidence or precedence demonstrating that it is an established norm in the casino and gambling industry, particularly in the operations similar to those of Richland. RHB did not lead any evidence to challenge the common business practice of Richland to show that it is "highly unusual" for a company to use its funds for an individual to gamble. In the absence of such evidence, this challenge is merely premised on RHB's assumptions which is without basis.

[48] On the other hand, DW1's testimony clearly establishes that Richland's role in the Casino Rebate Programme involves facilitating customers, including those introduced by third-party companies, to gamble at casinos. This role inherently entails managing funds from a variety of sources for the purpose of gambling.

[49] RHB also did not lead any evidence to show that the total sum remitted by Fujikura to Richland for the sum of RM1,031,000 is extremely exceptional in the gambling industry. Also, there was no evidence led by RHB to suggest that the risk of fraud is high by the nature of the gambling industry. I find that RHB's allegations are based on speculation and unsupported by evidence. For this reason, I accept that the transaction between Richland and Ng were carried out in the ordinary course of Richland's business.

[50] The introduction of Fujikura as a new source of funds for Richland's transactions, while indeed the first of its kind, does not automatically necessitate suspicion or a duty of inquiry under the circumstances. The absence of a prior relationship between Richland and Fujikura does not, by itself, indicate any irregularity, especially given the nature of Richland's business and the wide range of its financial dealings.

[51] In addition to the above, it is pertinent to note that Richland did not deny receiving the funds from Fujikura. Richland argues, and rightly so in the context of this case, that it has been a common business practice to receive funds from third-party companies on behalf of players. This is a crucial aspect of its operations and is supported by its financial records. Furthermore, Richland has been in operation for almost ten years by September 2020, the date of the transactions in question. This longstanding operation adds weight to Richland's assertion of its business practices being well-established and routine.

[52] As a matter of common sense, companies in their own capacity cannot gamble in Genting's casino. Further, taking the totality of the evidence before this court which include the evidence that Richland is a junket business of almost ten years standing which regularly receives funds for the purpose of gambling and Richland receives funds from non-individuals regularly, it can be logically inferred that the funds received by Richland from third party companies is for the purpose of individual players to gamble in Genting's casino. Richland's bank statements for year 2020 sufficiently proves Richland's common business practice.

[53] In conclusion, considering the extensive evidence and the context of Richland's business operations, this court finds that there was no compelling reason for Richland to be put on inquiry before proceeding with the transactions for Ng. RHB's contentions, while not without merit in a different context, do not adequately challenge the established and routine nature of Richland's business practices.

Discrepancies

[54] RHB contended that Richland turned a blind eye to certain discrepancies in the first remittance form stating "goods payment" and a non-existent invoice. Despite these discrepancies, DW1 did not make any inquiries with Fujikura but instead advised Ng to state in future that the remittance was for "entertainment" or "Ng Seang Heng." Therefore, according to RHB, Richland could not rely on the "change of position" argument when it was already put on inquiry when the first remittance form was submitted to Richland.

[55] Richland submits that RHB's claim of deliberate ignorance of discrepancies in the remittance forms by Richland is unfounded. Firstly, Richland's action of advising Ng to change the remittance reference from "good payment" to "entertainment" or "Ng Seang Heng" demonstrates due diligence rather than disregard for discrepancies. Richland argues that that the remittance form references, prepared by the remitter Fujikura, are outside of Richland's control, as supported by DW1's testimony that Richland commonly receives varying references which are decided by its customers. Moreover, Ng's compliance with Richland's advice to change the references supports Richland's position that it does not control the remittance details. Finally, Richland asserts that the essence of the remittance reference does not alter the validity of the transactions, which were approved by RHB upon Fujikura's authorisation, underscoring that there was no deliberate oversight by Richland.

[56] After carefully reviewing the issue of whether Richland turned a blind eye to the obvious discrepancies in the first remittance form stating "goods payment" and a non-existent invoice, the court has assessed both parties' arguments. Having looked at all the evidence and submission the court decides in favour of Richland.

[57] When Richland was given the remittance application form for the first remittance Richland response to the discrepancy by advising Ng to state in future that the remittance was for "entertainment" or "Ng Seang Heng" was reasonable. DW1's evidence was that the form was prepared by the remitter and it would be up to Fujikura, not Ng, to decide the reference which it wishes to put and whatever reference which Fujikura put as reference which was beyond Richland's control.

[58] In this sense Richland did not ignore the discrepancies of the first remittance application form. The discrepancies were brought to the attention of Ng Seng Heng which was subsequently rectified in the second and third remittance application forms. Upon receiving subsequent remittance application forms, Richland was reasonable in thinking that everything was in order due to Ng's ability to cause Fujikura to rectify the subsequent forms.

[59] Another factor to be considered is that the first remittance had already occurred at 11.31am on 11 September 2020. Ng *via* Whatsapp forwarded an image of the first remittance application form to Richland after the remittance. This remittance was done after RHB called Fujikura and spoken to Ms Puah of Fujikura at 11.29 am to confirm the remittance transaction pursuant to this remittance application form. Then, later in the evening Ng handed Richland the original copy of the remittance application form at Genting's casino for the opening of Ng's Casino Rebate Programme account and registering him as a player at or around 9.33pm. At the point of opening Ng's account, it is reasonable for Richland to accept that everything was in order as the remittance would have only occurred after RHB has approved the transaction upon receiving the required approvals from Fujikura. A bank such as RHB would have even more stringent approval procedures and it is reasonable for Richland to expect that such a large transaction would have required approval from the remitter, *via* Ms Puah's confirmation.

Dissipation

[60] RHB contended that Richland swiftly transferred RM1.6 million from its account to put the moneys it received from RHB out of reach after becoming aware of the fraud and attempt to recall the moneys from its account. DW1 was notified of the fraud around noon on 23 September 2020 when she received a call from Maybank notifying of RHB's request to recall the remittances of RM1,031,000 due to fraud and two hours later, at 2.09pm on the same afternoon, Richland deposited a house cheque drawn on its Maybank account for RM1.6 million in favour of Genting Malaysia Berhad ("Genting"). According to RHB, as Richland's account was left with only RM2,806.32, RHB's attempt to recall the sum of RM1,031,000 unsuccessful due to insufficient funds.

[61] Richland submits that the allegations by RHB, claiming Richland's swift action to put moneys out of reach upon notification of fraud, are unfounded and do not demonstrate bad faith. It is maintained by Richland that the funds received from Fujikura through three remittance transactions were indeed paid to Genting, a separate entity not controlled by Richland. Richland contends that the timing of these payments, made on 15 September 2020 and 23 September 2020, does not negate the fact that the moneys were owed to Genting for non-negotiable gaming chips supplied to Ng. Furthermore, Richland's financial activities, as evidenced in its Maybank statement for September 2020, show continued business transactions post these dates, contradicting RHB's assertion of bad faith. Richland also emphasises that the inability of RHB to recall the funds was due to a police report lodged by Richland, as evidenced in the police report dated 24 September 2020, and not due to any dissipative actions by Richland.

[62] When the argument of dissipation is raised, the court will need to consider first of all, how this "dissipation" would benefit Richland.

[63] The moneys which Richland received from Fujikura through the three remittance transactions were paid to Genting. This was not disputed. Genting is not a corporation owned or controlled by Richland. Here, it can be seen that the transfer of moneys out of Richland's account did not benefit Richland.

[64] RHB suggests that there was no reason to pay a sum of RM1.6 million to Genting when only eight days earlier, on 15 September 2020, Richland had already paid a sum of RM2.8 million to Genting and there is no evidence that such a sum was due to Genting on 23 September 2020. However, by the same token, the moneys received by Richland from Fujikura through the three remittance transactions must eventually be paid to Genting to account for the non-negotiable gaming chips that were paid by Richland to Ng. For RHB's argument of dissipation to work, RHB must show that Richland actually wanted to put the moneys out of reach of RHB and not due to another reason. In my view, Richland's payment of RM1.6 million to Genting on 23 September 2020 at 2.09pm were payments that had to eventually be paid to Genting to account for the non-negotiable gaming chips that were paid by Richland to Ng earlier. This was only the act of a business that was keeping on top of its payments to creditors, even when not due. Richland's payments to Genting on 15 September 2020 and 23 September 2020 are indicative of normal business transactions and do not in themselves imply any act of bad faith or an attempt to evade the consequences of the alleged fraud.

[65] RHB's submission is that RHB's attempt to recall the sum of RM1,031,000 was unsuccessful due to insufficient funds as Richland's account was left with only RM2,806.32. However, no evidence was led on this point by RHB. The only evidence from PW2 was found in Q&A No. 8:

> Q: What did RHB do after that?
>
> A: On 22.9.2020 itself, we immediately attempted to recall the 3 remittances that were made to Richland's Account. This was however not successful.
>
> RHB subsequently paid the sum of RM1,031,000 to Fujikura being the total amount of the 3 remittances that were remitted from Fujikura's Account without their mandate.

[66] Nothing was ascribed to the recall being unsuccessful due to insufficient funds. No particulars were also given as to how this "attempt to recall" were made. Also, if the only "attempt to recall" was made on 22 September 2020 but the payment to Genting by Richland was made on

A 23 September 2020, then surely the unsuccessful attempt on 22 September 2020 was not due to the payment out of Richland's account on 23 September 2020.

[67] Richland submitted that RHB was unable to recall the moneys remitted by Fujikura to Richland because a police report was lodged on
B 24 September 2020 at 1.49am by Richland to bar RHB from recalling the said moneys remitted by Fujikura. This can be accepted as a possible reason why the transfers cannot be recalled. This action by Richland, rather than pointing to bad faith, appears to be a protective measure in response to what was perceived as an unwarranted claim of fraud.

C **[68]** Upon examination of Richland's bank statements from 23 September 2020, I find that even after 23 September 2020, Richland was still running its business as usual and receiving payments from its other customers. Right up to 30 September 2020, there was a balance of RM1,029,486.22. There was no attempt by Richland to put these subsequent moneys out of reach of
D RHB. The bank statement demonstrates that Richland continued its usual business activities, receiving payments from various customers, which undermines the claim that Richland acted swiftly to put the funds out of reach.

E **[69]** Based on the above, I cannot accept that RHB's attempt to recall failed due to insufficient funds as this was not conclusively proved by RHB. Therefore, RHB's contention that Richland dissipated funds from its account to put the moneys it received from RHB out of reach after becoming aware of the fraud and after RHB's attempt to recall the moneys from Richland's account fails.

F *Moneys Had And Received*

[70] RHB submits that Richland is liable for the claim of money had and received, as it received funds under circumstances that, in both natural justice and equity, necessitate a refund. It is maintained by RHB that, drawing on
G precedents such as the *Affin Bank v. MMJ Exchange* case, funds received by one party that rightfully belong to another, especially under circumstances not intended by the payer, should be recoverable as money had and received. RHB contends that, in this case, Fujikura never intended to remit any money to Richland, as evidenced by the absence of any dealings or knowledge
H between Fujikura and Richland. Furthermore, RHB argues that the overall conduct of Richland, which includes ignoring discrepancies in remittance forms and failing to inquire about the source of funds, demonstrates a lack of *bona fide* dealings, thus necessitating a refund. In essence, since neither Fujikura nor RHB intended for Richland to retain and use the funds, which were not rightfully its, Richland must return the monies to Fujikura or RHB.
I

[71] Richland submits that the issue concerning its liability to refund RM1,031,000, premised on money had and received, is unfounded. It is maintained by Richland that the principles of money had and received, as illustrated in cases like *Bank Bumiputra Malaysia Sdn Bhd v. Hasbudin Hashim*, do not apply in this context. Richland contends that the remittances made by Fujikura were for services rendered in facilitating Ng's participation in Genting's Casino Rebate Programme, which is a legitimate business transaction. Furthermore, Richland asserts that the commission earned from these transactions was nominal, amounting to RM1,043.50, which does not constitute unjust enrichment at RHB's expense. Therefore, Richland argues that natural justice and equity do not necessitate a refund of the sum in question.

[72] Having duly considered the submissions of both RHB and Richland, the court is now poised to deliver its findings on the pertinent issues in dispute.

[73] The evidence presented by Richland establishes that the transactions were part of a legitimate business arrangement involving the provision of junket services in Genting's Casino Rebate Programme. Richland's testimony (DW1) and corroborating documents, such as the remittance application forms dated 11 September 2020, 14 September 2020, and 18 September 2020 and Genting's receipts, clearly illustrate that Ng was engaged in gambling activities facilitated by Richland. These activities were consistent with Richland's role as an operator of the Casino Rebate Programme.

[74] Further, Richland's actions following the receipt of funds from Fujikura indicate compliance with standard business practices rather than unjust enrichment. Richland allocated non-negotiable gaming chips to Ng equivalent to the remitted sums, as evidenced by Richland's record card acknowledged by Ng. Richland subsequently transferred the equivalent sums to Genting to account for these chips, as confirmed by Richland's Maybank statements and PW2's testimony, where transactions totalling RM1.6 million were made to Genting on 15 September 2020 and 23 September 2020.

[75] Richland's commission from these transactions amounted to only 0.1% (RM1,043.50), as noted in DW1's testimony and supported by documents, underscoring the absence of any significant financial gain that could be construed as unjust enrichment.

[76] Moreover, Richland's swift response to the notification of fraud by RHB, as evidenced by the police report lodged on 24 September 2020 at 1.49am, demonstrates its good faith and lack of involvement in any fraudulent activity.

[77] In the light of these factors and guided by the principles laid out in *Bank Bumiputra (M) Sdn Bhd v. Hasbudin Hashim* and *Ambank (M) Bhd v. KB Leisure (M) Sdn Bhd*, this court finds that Richland did not receive RHB's money under circumstances that would necessitate a refund. RHB's claim that Richland was unjustly enriched is not supported by the evidence. Thus, Richland's actions were within the scope of its legitimate business operations, and no grounds exist for RHB to recover the said sum on the basis of money had and received.

[78] RHB also contended that there were 'red flags' to put Richland on inquiry. Therefore, it argued that the conduct of Richland from turning a blind eye to the source of the moneys, ignoring the discrepancies in the first remittance form, advising to correct the discrepancies in future to putting the moneys out of reach upon knowing of the fraud show that natural justice and equity would require a refund for money had and received by Richland.

[79] I have rejected in respect of RHB's contention on Richland being put on inquiry and dissipation above. The same findings will apply here. I therefore do not accept RHB's submissions that natural justice and equity would require a refund for money had and received by Richland as Richland turned a blind eye to the 'red flags'.

Conclusion

[80] After careful consideration of the facts and legal principles, the court dismissed RHB's claim to recover the RM1,031,000 that was mistakenly remitted to Richland. The court found that although RHB made the payments under a mistake based on forged documents, Richland was able to establish the defence of change of position in good faith. Specifically, Richland showed that it provided gaming chips to Ng in exchange for the funds received, consistent with its legitimate business activities, and subsequently accounted for those funds to Genting. As such, Richland was not unjustly enriched. The court concluded that requiring Richland to refund the monies to RHB would be inequitable under the circumstances. Thus, RHB failed to prove entitlement to restitution.

[81] The court orders that costs of RM15,000 is paid by RHB to Richland subject to the allocatur fees.